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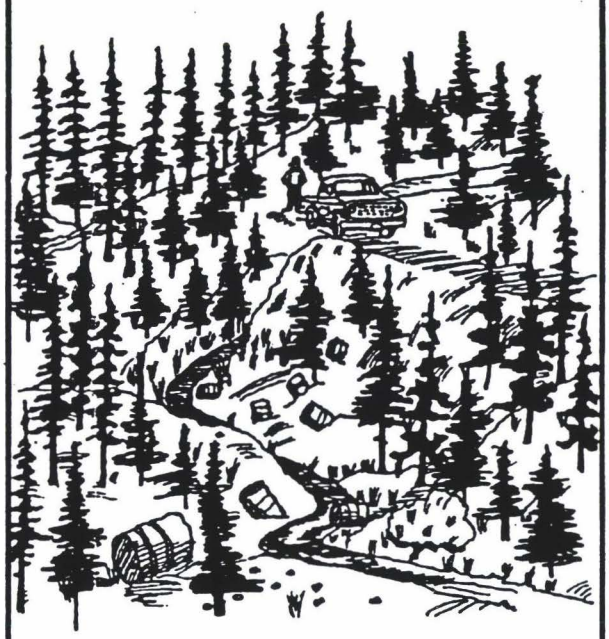
HAZARDOUS SUBSTANCES AND CERCLA

AN OVERVIEW



United States Department of Agriculture | Forest Service | Southern Region | Atlanta Georgia

PURPOSE

The goal of this publication is to give Forest Service personnel a brief overview of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) program.

The purpose of CERCLA is to identify sites where releases of "hazardous substances" into the environment might occur or have occurred, to ensure that they are cleaned up by the responsible parties, or the government to evaluate damages to natural resources, and to create a procedure for recovery of costs.

LINES OF COMMUNICATION—RO/SO

*Main contacts for reporting a release or threatened release.

**Legal counsel and advisor to Forest Service Officers.

WHAT HAPPENS WHEN THERE IS A RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE? (Figure 1)

When a release or threatened release of a hazardous substance is discovered, REPORT IT IMMEDIATELY TO YOUR SUPERVISOR. Secure the area so no one can become contaminated and do not attempt to remove materials on your own. Do not attempt to open closed containers to determine the contents. Observe from a distance and do not risk contamination in any way.

The Forest will contact the Regional Office Federal Facilities Compliance Coordinator (FFCP), (Group Leader–Environmental Engineering). The Regional CERCLA Coordinator and Forest Personnel will jointly review the site to determine if a release of a hazardous substance has actually taken place (Block A). If there has not been a release but drums, sacks, etc. of an unknown or suspected substance(s) are present, the substance(s) will be tested by a qualified person as designated by the CERCLA coordinator (Block B). If found to be hazardous, the drums, sacks, etc., will be removed by a licensed carrier using proper removal methods (Block C) with state consultation.

For sites where there appears to be a release of hazardous substances, the sites will be tested (Block D). If a "release" (release of a reportable quantity) has occurred the Regional CERCLA Coordinator (Block E) will immediately notify the NRC at 1-800-424-8802. The Regional Forester will designate an OSC/RPM. When the site is docketed, the following will take place:

Within 9 months from the date the site is docketed, a Preliminary Assessment (PA) must be conducted by the site owner/operator or Forest Service. Contact the EPA Regional Office (Block F) to determine their requirements and time frames for submission of the PA/SI (Preliminary Assessment/Site Investigation).

The PA is sent to the EPA to be evaluated and used to score the site with the Hazard Ranking System (HRS) (Block G). If requested by the EPA, an SI will be completed to further define and characterize

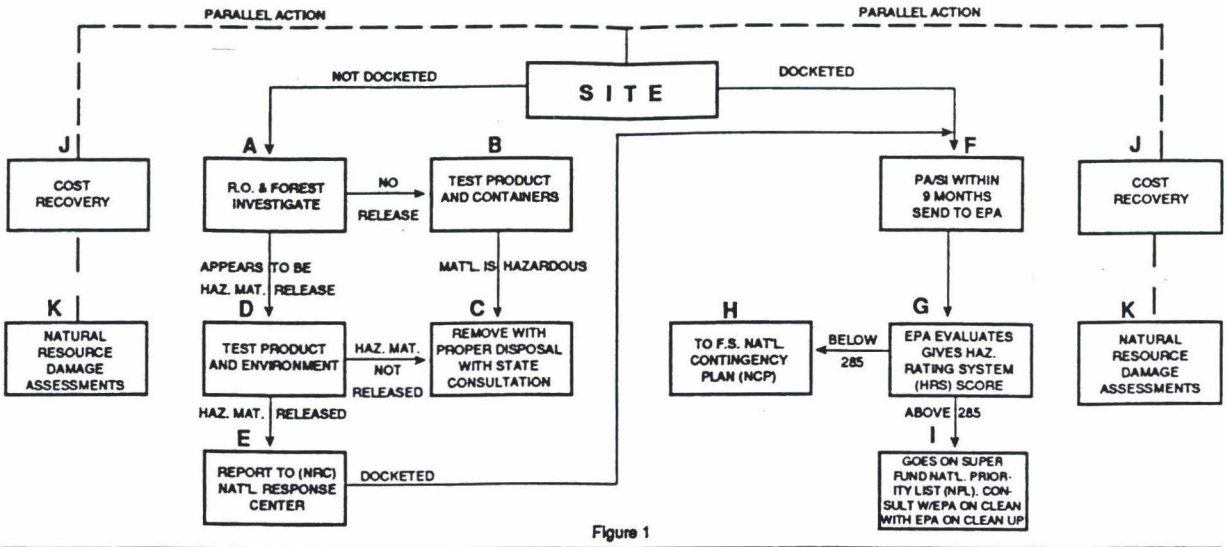


Figure 1

the problem. If the site has an HRS score of 28.5 or higher, it is put on the National Priorities List (NPL) (Block I and the FS must consult with EPA on how to clean up the site. If the site scores lower than 28.5, it is remanded back to the Forest Service and State for further action (Block H). If further action is initiated by the Forest Service it must meet State and CERCLA requirements. These requirements are outlined in the National Contingency Plan (NCP).

If the site is large or complex and poses a sufficient hazard to human health and the environment, a Remedial Investigation/Feasibility Study (RI/FS) will be conducted. As part of the RI, a health assessment may be conducted along with a variety of other investigations such as a risk assessment which is a qualitative and quantitative evaluation of the risk posed to human health and the environment.

The Forest Service documents various methods (alternatives) which might be used to clean up the site and their associated benefits and costs.

The RI/FS process is the basis for selection of a remedy for the site. Once the RI/FS is completed, the government then chooses a remedial action for the site, which is the cleanup activity designed to obtain a permanent remedy which results in long-term site cleanup. Applicable or Relevant and Appropriate Requirements (ARARs) will also be determined. The remedial alternative/action and ARARs will be identified in a Record of Decision (ROD). When the ROD is signed and approved by the appropriate Forest Officer, the site finally moves into a remedial design and a remedial action phase.

Any time during this process, one or more removal actions can be accomplished. The government may complete removal actions on its own, or may issue orders to Potentially Responsible Parties (PRPs) to complete the removal action(s). The On-Scene Coordinator (OSC) is responsible for conducting a preliminary site assessment where a removal action is initiated.

As a parallel action(s), the government can bring a cost recovery action (Block J) and if warranted, a Natural Resource Damage Assessment action (Block K) against the PRPs (discussed more fully below).

WHO MAY BE LIABLE UNDER CERCLA AT A SITE CONTAINING A RELEASE OR THE THREAT OF A RELEASE OF A HAZARDOUS SUBSTANCE?

All Potentially Responsible Parties may be strictly liable under CERCLA and can be jointly and severally liable for cleanup. PRPs should be identified; notified of their potential liability and given opportunities to respond at each step of a response action.

WHAT IS STRICT, JOINT, AND SEVERAL LIABILITY?

Joint and several liability defines the scope of liability. If the injury or damage is indivisible, each PRP could be liable for the entire cost of the cleanup.

Strict liability refers to the standard of liability. What this means is that you do not have to be a fault to be liable for the cost of cleanup.

WHAT ARE THE PRINCIPAL REIMBURSEMENT ACTIONS TO THE GOVERNMENT?

1) CERCLA ACTIONS:

The principal reimbursement action available under CERCLA is cost-recovery from PRPs for response and cleanup actions on-site. Recovery of costs are those costs expended by the government from "discovery" to "final remediation".

2)NATURAL RESOURCE DAMAGES:

A Natural Resource Damage Assessment (NRDA) evaluates the effects from a hazardous substance release that injures natural resources off site. Natural resources include air, fish, wildlife, biota surface and ground water, land, drinking water, and other natural resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the U.S. Government, and state or local government, any Indian tribe or any member of an Indian tribe. You should request trustee involvement when conducting an NRDA, if appropriate. Natural resource trustees may also recover damages for injury to natural resources, including the reasonable costs of assessing such injury.

HOW ARE CERCLA ACTIONS FUNDED?

The above CERCLA actions are funded by the Department of Agriculture with moneys specifically set aside for CERCLA cleanup actions. These moneys are to be used for CERCLA related activities only (i.e. PA's, administration, contracts, sampling, etc.) at a site. Detailed documentation of all costs incurred sufficient to withstand judicial review must be maintained by the Forest Service.

DEFINITIONS

ARARs (Applicable or Relevant and Appropriate Requirements): ARARs include Federal and/or state cleanup standards, standards of control, and other environmental protection standards/requirements.

Docket (Federal Agency Hazardous Waste Compliance Docket): The docket is an EPA database used to list sites where releases or threatened releases of hazardous substances are present and is used to track cleanup actions.

RI (Remedial Investigation)/FS (Feasibility Study): An RI is a study to gather the data necessary to determine the type and extent of contamination at a site. A FS study is to develop and evaluate options or alternatives for remedial action.

HRS (Hazard Ranking System): A scoring system used by EPA to evaluate potential risks to public health and environment from releases of hazardous substances.

NRDA (Natural Resource Damage Assessment): Determines natural resource damages.

Natural Resource Trustee: A trustee is the authorized state or federal official who acts on behalf of the public as trustee(s) for natural resources.

NRC (National Response Center): The federal operations center, operated by U.S. Coast Guard, that receives notifications of all releases of oil and hazardous substances into the environment. The Coast Guard evaluates all reports and notifies the appropriate agency (ies).

NCP (National Contingency Plan): Federal regulation (40 CFR 300) that guides the CERCLA response program.

NPL (National Priorities List): EPA's list of Superfund sites.

OGC (Office of the General Counsel): Legal advisor to FS. Should be consulted on new and questionable issues.

OSC/RPM (On-Scene Coordinator/Remedial Project Manager): The Federal Official who coordinates and directs removal/remedial actions.

PA (Preliminary Assessment): Process of collecting and reviewing readily available information about a known or suspected hazardous waste site or release. The PA is used by the EPA to score the site with the HRS.

PRP (Potentially Responsible Party): Any individual, company, state or federal agency potentially liable for contamination problems at a hazardous waste or release site.

Remedial Action: A long-term action that stops or substantially reduces a release or threatened release of a hazardous substance.

Removal Action: An immediate short-term action taken to address a release or threatened release of a hazardous substance(s).

RQ (Reportable Quantity): Established by 40 CFR 302 as triggers for notification of the National Response Center (NRC) when hazardous substances are released.

Release: Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment a reportable quantity of any hazardous substance including the abandonment or discarding of barrels, containers, and other closed receptacles.

SI (Site Investigation): A technical phase that follows a Preliminary Assessment designed to collect more extensive information on a site.

ARE THERE ANY STATUE OF LIMITATIONS ON THESE CERCLA ACTIONS?

For NRDA damage recovery: Court actions must begin within 3 years after the discovery of natural resource damage and its connection to the release; 3 years after the date of promulgation of the applicable regulation; or three years after remedial action is completed.

For removal actions: Court actions must begin within 3 years after the action is completed. For remedial actions: Court actions must begin within 6 years after the initiation of physical onsite implementation of the action.

If you have any questions on the CERCLA program, please contact your Forest HAZMAT Coordinator or the Federal Facilities Compliance Program Coordinator (Group Leader-Environmental Engineering) Engineering, Regional Office, 347-3369.

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